14.

SPEECH

OF

HON. GEORGE F. EDMUNDS,

OF VERMONT,

IN THE SENATE OF THE UNITED STATES, APRIL 14, 1871.

The Senate, as in Committee of the Whole, having under consideration the bill (H. R. No. 320) to enforce the provisions of the fourteenth amendment to the Constitution of the United States, and for other purposes—

Mr. EDMUNDS said:

Mr. PRESIDENT: I am sorry that, in order to be specific in arguments about the Constitution and the law, one is obliged to be dull. If one only had the genius and the enthusiasm of those of our friends and our enemies both—I do not care to be specific—who are willing to oppose legislation upon the imagination and upon rhetoric, then certainly I should not attempt to make any speech at all. But inasmuch as this is an important public question, which involves, as Senators have said, delicate responsibilities between the States and the national Government, I think it right that we should examine a little in detail precisely what sort of a Government we have and precisely what its rights are; and if it shall turn out on such an examination that the bill which we have proposed is within the clear scope of constitutional authority, and is within the clear line of legislative precedent, and is a means to the preservation of private rights, then I shall hope that even our Democratic friends will be willing to agree that the crimes which have been committed, and which have had added to them that other and greater crime on the part of the tribunals and communities in which they occur of being suffered to go unpunished, shall be reached by every means of lawful legislation. They certainly ought not to deny that if crimes such as have been stated exist, and are unrepressed by existing laws and authorities, every measure of constitutional legislation which will have a tendency to preserve life and liberty and uphold order ought to be resorted to.

I agree entirely, Mr. President, with the sentiment expressed by the honorable Senator from Missouri who sits farthest from me [Mr. BLAIR] the other day, not entirely with his unlimited statement of it, but with the sentiment that—

> "The Government certainly owed protection to the Union men of the South, precisely and in the same proportion as the people of the South owed allegiance to the Government. As I remarked the other day, the duty of protection on the part of the Government and the duty of allegiance on the part of the citizen are reciprocal duties—the one is the consideration for the other. If one fails in his duty he has no right to exact the performance of the other. If the Government failed to protect its citizens, it could not require the allegiance of its citizens. If it refused to make an effort to protect them, it had still less ground to require its citizens to yield their allegiance."

That, Mr. President, is sound doctrine, with the qualification that the duty of the Government to protect its citizens is not absolute in the final sense; its duty to protect is that it will exhaust all the resources of its power, by diligent and faithful and vigorous effort to preserve the liberties and the rights of its citizens; and when it has done that it has performed the full function of government, and when it has refused to do that it has failed, and is not entitled to be called a complete or just Government at all; and it ought to be put down by revolution or otherwise.

Now, sir, if the people of these southern States, whose case is what you know and what all the people know, are not protected to the uttermost bound of the power of the nation whose citizens they are—the uttermost bound I mean of course of its constitutional power—then, on the principle of the honorable Senator from Missouri, and the true principle, we have absolved them from allegiance to us; they owe us no duty of obedience to law, and they are remitted to themselves to protect themselves as best they may. Do Senators wish to reach that conclusion? Do Senators wish to meet in a year or two that event? Is my honorable friend from California [Mr. CASSERLY] so desirous to foment a war of races, which will surely come at last, as vengeance always fol-

lows crime in some way, as to view with indifference such a possibility; or is he willing, if he constitutionally may, to interpose the calm force of law, through the judiciary, aided by the lawful executive power of the nation, to punish crime and uphold order? That is the question that he will have to face, and that is the only question.

We have been told, Mr. President, a good many times, and for a good many years, that this national Government of ours is, after all, not a Government of the people, but that it is merely a confederated Government of States, and that wherever and whenever the national authority undertakes to appeal to a citizen either to do or omit to do a thing, it transcends its authority; that all the rights and duties of a citizen are infolded in his State constitution, and that we therefore, under the recent amendments or under the old Constitution, must act only upon that political body called the State, as we would act in the case of our relations with a foreign Power. This was the doctrine of the Democratic party before the rebellion; it was a doctrine common to it and the powers of the rebellion during the war, and it has been so since. Sir, that is a mistake. It is a mistake which led to the rebellion; it is a mistake which has led to the fruits of that rebellion which we are now reaping in the last and basest form which the spirit that produced the rebellion can possibly assume.

The honorable Senators over the way have thought fit to read from those excellent commentaries upon the strength and stress of which the people of the United States, through their States, adopted this Constitution, to show what was the nature of this Government. So will I. Mr. Hamilton, in these publications, which were put forth, as I say, when this Constitution was about to be adopted, and when, as my friend from Wisconsin [Mr. CARPENTER] so properly suggests, the temptation was entirely to diminish and belittle the powers of the Government—Mr. Hamilton, speaking of the difficulties between independent States and of the difficulties in the relations of the national Government to the States under the Confederation, says:

"But if we are unwilling to be placed in this perilous situation; if we still will adhere to the design of a national government, or, which is the same thing, of a superintending power, under the direction of a common council, we must resolve to incorporate into our plan those ingredients which may be considered as forming the characteristic difference between a league and a government, we must extend the authority of the Union to the persons of the citizens, the only proper objects of government.

"Government implies the power of making laws. It is essential to the idea of a law that it be attended with a sanction, or, in other words, a penalty or punishment for disobedience. If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws will in fact amount to nothing more than advice or recommendation."

Which is the redress and remedy our honorable friends desire to give to this existing evil, and which I see from the debates in the House they are to do by a sort of encyclical letter to their friends whose excesses give them so much cause for mortification.

"This penalty, whatever it may be, can only be inflicted in two ways: by the agency of the courts and ministers of justice, or by military force; by the coercion of the magistracy, or by the coercion of arms. The first kind can evidently apply only to men; the last kind must, of necessity, be employed against bodies-politic, or communities, or States. It is evident that there is no process of a court by which the observance of the laws can, in the last resort, be enforced. Sentences may be denounced against them for violations of their duty, but these sentences can only be carried into execution by the sword."

That, sir, is precisely the principle upon which this bill is framed. It does not seek by military power to invade any State, or the right of any State or any man; it seeks to denounce, by a declaration of what shall be a crime, an unconstitutional act; and it endeavors to enforce the penalty imposed upon that by the proper intervention of the judiciary; and then it proceeds to lend the strong arm of the nation to the assistance of that judiciary. But he proceeds and says again:

"The result of these observations to an intelligent mind must be clearly this, that if it be possible at any rate to construct a federal government capable of regulating the common concerns and preserving the general tranquillity, it must be founded, as to the objects committed to its care, upon the reverse of the principle contended for by the opponents of the proposed constitution. It must carry its agency of the persons of the citizens. It must stand in need of no intermediate legislation, but must itself be empowered to employ the arm of the ordinary magistrate to execute its own resolutions. The majesty of the national authority must be manifested through the medium of the courts of justice. The Government of the Union, like that of each State, must be able to address itself immediately to the hopes and fears of individuals, and to attract to its support those passions which have the strongest influence upon the human heart. It must, in short, possess all the means, and have a right to resort to all the methods of executing the powers with which it is intrusted, that are possessed and exercised by the governments of the particular States."

This was the construction of the Constitution as it was by him who largely participated in the framing of it, by him whose counsels alone, through the publications embodied in this book, gave us the Constitution at all. To exercise these high duties is not, as the honorable Senator from Illinois [Mr. TRUMBULL] complained, to "enter a State," or, as a Senator on the other side said, to "invade" a State; but it is to obey the will of the whole people expressed in the Constitution. The national Government never either enters or invades a State. It is always and everywhere in every State already. It is among the people, and administered by the officers of the people whose Government it is.

This is not all as to the nature of this Government. It is a Government, as our brethren on the other side have probably learned by this time, of separated powers, and among those is the department of the judiciary, to whose judgments, when they are on their side, they advise us with great solicitude to bow, and we always do. Now, hear the judgment of the great tribunal whose function it is to pronounce upon constitutional powers, so far

as they affect the relations of persons to the Government and the relations of all private rights. Says Mr. Justice Story, in the case of Martin *vs.* Hunter, in 1 Wheaton:

"The Constitution of the United States was ordained and established, not by the States in their sovereign capacities, but emphatically, as the preamble of the Constitution declares, by 'the people of the United States.' There can be no doubt that it was competent to the people to invest the General Government with all the powers which they might deem proper and necessary; to extend or restrain these powers according to their own good pleasure, and to give them a paramount and supreme authority." * * * * * * * * *

"It did not suit the purposes of the people in framing this great charter of our liberties to provide for minute specifications of its powers, or to declare the means by which those powers should be carried into execution. It was foreseen that this would be a perilous and difficult, if not an impracticable task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence. It could not be foreseen what new changes and modifications of power might be indispensable to effectuate the general objects of the charter; and restrictions and specifications, which, at the present, might seem salutary, might, in the end, prove the overthrow of the system itself. Hence its powers are expressed in general terms, leaving to the Legislature, from time to time, to adopt its own means to effectuate legitimate objects, and to mold and model the exercise of its powers, as its own wisdom and the public interests should require."

Now, sir, what were these general objects to which this learned judge refers in deciding this cause? They are stated, as he has said, in the preamble of this instrument. Let us hear them. They seem to have been forgotten or overlooked—some time they must have been read—by the honorable gentlemen who have opposed this bill:

"We, the people of the United States, in order to form a more perfect Union, to establish justice"—

which I believe is rendering to every man his due—

"to insure domestic tranquillity"—

which I believe is to preserve peace everywhere within the boundaries of the United States—

"and to provide for the common defense, to promote the general welfare, and to secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

These, say the court, are the general objects; and in carrying out these objects in the methods and through the instrumentalities which the Constitution had provided, Congress, the legislative power, as a sovereign power over the people, of them and from them, and exercising the same forces over them that a State does over its citizens, was to select the means through which these great objects were to be attained. Therefore I say, sir, that from the beginning this was a Government of the nation and over the inhabitants of the nation as inhabitants, and not through the power of the States, just so far as, and to the full extent that, the Constitution in its grant of powers confided subjects for consideration and provision to the national Government.

Again, Mr. Chief Justice Marshall, in the case of Cohens *vs.* Virginia, undertook to enumerate the conditions under which the Government was formed, and the conditions under which alone it could succeed. He says:

"If it could be doubted whether, from its nature, it were not supreme in all cases where it is empowered to act, that doubt would be removed by the declaration that 'this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.'

"This is the authoritative language of the American people; and, if gentlemen please, of the American States. It marks, with lines too strong to be mistaken, the characteristic distinction between the Government and the Union, and those of the States. The General Government, though limited as to its objects, is supreme with respect to those objects. This principle is a part of the Constitution; and if there be any who deny its necessity, none can deny its authority.

"To this supreme government ample powers are confided, and, if it were possible to doubt the great purposes for which they were so confided, the people of the United States have declared that they are given 'in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to themselves and their posterity.'

"With the ample powers confided to this supreme government for these interesting purposes are connected many express and important limitations on the sovereignty of the States, which are made for the same purposes. The powers of the Union on the great subjects of war, peace, and commerce, and on many others, are in themselves limitations of the sovereignty of the States, but in addition to these, the sovereignty of the States is surrendered"—

And here I beg gentlemen on the other side to mark what he says—

"but in addition to these, the sovereignty of the States is surrendered in many instances where the surrender can only operate to the benefit of the people, and where, perhaps, no other power is conferred on Congress than a conservative power to maintain the principles established in the Constitution."

Again, in the case of Gibbons *vs.* Ogden, the court declare:

"And our Constitution being, as was aptly said at the bar, one of enumeration and not of definition to ascertain the extent of the power it becomes necessary to settle the meaning of the terms employed in it."

The men who formed the Constitution did not undertake to define what were the rights of man which it undertook to secure. They did not undertake to define the war, for illustration, which it authorized Congress to make. It enumerated, as the court have said, the great objects over which and for which, to secure the ends named in the preamble, the powers of the people were delegated to the authority of the Government, leaving to the Government, through its proper departments, the definition of those powers.

Now, Mr. President, I think it must be admitted—I had supposed that events had settled it until I heard this debate—that this Constitution, be it much or little, (for I am not now on the point of its extent,) if it gives us authority or if it withholds it, is to the extent of its scope a Constitution of the people, and that it brings the people, in respect to every right

which it secures to them, into direct communication with that Government which exists by the Constitution, and which only and solely has the paramount power to enforce it. The governments of the States cannot finally or independently enforce or decline to enforce the Constitution of the United States; it is not their Constitution in the sense that the constitution of the State is. It is the Constitution of the whole people as a national body, and the requirements of which they cannot finally pass upon; and therefore whatever rights are secured to the people under it must be guaranteed to them and made effectual for them at last through the instrumentality of the national Government, and through no other.

I need scarcely occupy your time, Mr. President, and that of the Senate, in showing how perfectly the authority of Congress to execute this Constitution, and the authority of Congress to choose the means by which it shall be executed, is recognized by the judicial department of the Government; but lest my friends on the other side should suspect that I had slighted this part of their argument, I will read to them an authority which I am sure they will recognize—that of Prigg *vs.* The Common wealth of Pennsylvania, in which the Supreme Court decided, as they know, that the obligation imposed to return fugitives from labor was an obligation the performance of which by the nation was secured by the Constitution of the United States as it was. Although nothing was said as to the power of Congress to put it into execution, although no "appropriate legislation" was referred to or authorized in terms to give it effect, the court said, as they know, and said as the law was, painful and unfortunate as was the incident which should have brought it into application, that it was the solemn duty of Congress under the Constitution to secure to the individual, in spite of the State, or with its aid, as the case might be, precisely the rights that the Constitution gave him, and that there should be no intermediate authority to arrest or oppose the direct performance of this duty by Congress. The court say:

"The State legislation may be entirely silent on the whole subject, and its ordinary remedial process framed with different views and objects,"—

which has a very apt application to some of the State legislation in the States whose condition we have been considering—

"and this may be innocently as well as designedly done, since every State is perfectly competent, and has the exclusive right to prescribe the remedies in its own judicial tribunals, to limit the time as well as the mode of redress, and to deny jurisdiction over cases which its own policy and its own institutions either prohibit or discountenance.

"If, therefore, the clause of the Constitution had stopped at the mere recognition of the right, without providing or contemplating any means by which it might be established and enforced in cases where it did not execute itself, it is plain that it would have, in a great variety of cases, a delusive and empty annunciation. If it did not contemplate any action, either through State or national legislation, as auxiliaries to its more perfect enforcement in the form of remedy or of protection"—

"Protection," mark the word, Mr. President; it appears in the fourteenth amendment—

"then, as there would be no duty on either to aid the right, it would be left to the mere comity of the States to act as they should please; and would depend for its security upon the changing course of public opinion, the mutations of public policy, and the general adaptations of remedies for purposes strictly according to the *lex fori*." * * * *

"The fundamental principle, applicable to all cases of this sort, would seem to be, that where the end is required the means are given; and where the duty is enjoined, the ability to perform it is contemplated to exist on the part of the functionaries to whom it is intrusted."

Mr. President, my friend from Illinois, [Mr. TRUMBULL,] when he addressed the Senate the other day, seemed to have the apprehension that we were or might be by this bill entering upon a great change in the character of the Government, in the fact that we were endeavoring to protect personal rights, which, he said, the traditions of the Government and the course of the Constitution had always left to the States. If that were so, it would be no argument against the propriety of this bill, provided the new phases and amendments of the Constitution had made the change. But it is not a new idea. As I have stated, the government of the United States over the subjects which are intrusted to it has always been a government which dealt directly with the people, and which, from the nature of things, could not in any case effectually deal otherwise than by open war directly with the State, even in those cases where the prohibition is directly upon the State, as in that, for instance, of making a negotiation with a foreign Power.

If the State of Vermont, for example, negotiates with the British Government for the extradition of fugitives, what is the United States to do about it as to the State of Vermont? She can institute no process against that State to set aside the treaty. Her only redress against us would be either "the last reason of kings," as the saying is, warfare, for a violation of that duty, or else, as also has been done, addressing itself directly to the people, to the persons, in spite of any act of the State in its collective capacity. And so in the very instance to which I have referred as an illustration of the prohibition to make treaties, which is a direct prohibition on the States, which has nothing on the face of it to do the individual action or individual right at all, the only method through which the treaty-making power of a State could be assailed or the act of making a treaty by a State could be denied, was, and has been, in the very case of the State of Vermont, through the intervention of the national Legislature acting upon the persons in providing methods of personal repression through the courts; so that many years ago, when the Governor of the State of Vermont entered into an arrangement, before we had any extradition treaty with Great Britain, to surrender a notorious criminal to the authorities of Canada, that criminal applied to the courts and was released by the Supreme Court of the

United States, dealing directly between him and the person who held the office of Governor, not Governor Jennison, but citizen Jennison.

It is a delusion, therefore, to imagine that at any time and in any way the faculties and functions enumerated in this Constitution, which have been given to the United States or have been denied to the States, are to be carried out solely through secondary means. Wherever the Constitution imposes a duty or a prohibition, and it becomes necessary to make it effectual, the Government always has, and it always must, short of warfare, go directly to the thing itself, take hold of the citizen.

In the course of this enumeration of personal rights, perhaps one of the chief in the old Constitution was that of securing equal privileges and immunities to the citizens of the several States. I should not have thought it necessary to allude to this provision in this debate but for the stress that my friend from Illinois, [Mr. TRUMBULL,] who I am sorry to see is not present at this time, laid upon it when he was endeavoring to persuade himself that the fourteenth amendment of the Constitution had made no change in the constitutional rights of citizens or in the constitutional duties of the Government toward them. He undertook to show that the provision in the fourteenth amendment, using sometimes words of the same character, was the same in substance with the ancient provision. That is another mistake. The ancient provision was that—

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

Not that the citizens of the United States shall be entitled to privileges and immunities in every State, but that the citizen of one State going into another should have the rights of a citizen there; and it was out of that that the doctrine grew, and it came to be legal doctrine almost at last, that the citizen of one State going into another was not entitled to exercise the rights of a citizen of that State in every case; and it was out of that that the doctrine grew that the citizen of one State might not be a citizen of the United States at all, in the sense of being entitled to the privileges and immunities of the citizen of another State. It was only a State citizenship, and from that State citizenship resulted the national citizenship in that State, and when he had removed to another State he then became a citizen in due process of time of that State, and his national citizenship resulted, as the branch results from the root, from his citizenship of that State. In other words, national citizenship before this amendment was merely a consequence of State citizenship, and, as the old saying is, as the stream cannot rise higher than its source, so the right of the national citizen, using that term as applied to him, was not greater than the right of the State citizen, however that might be cramped or defeated by State legislation or State constitutions. Upon that principle the State of South Carolina imprisoned citizens of Massachusetts because they visited its ports for lawful commerce, and the Constitution of the United States, so far as that went, if those persons had gone there to remain, to reside, instead of going in the casual course of business, would have been powerless to protect them.

Mr. TRUMBULL. Do I disturb the Senator if I ask him a question?

Mr. EDMUNDS. Not in the slightest degree.

Mr. TRUMBULL. I should like to ask the Senator from Vermont if the United States were not bound, before the fourteenth amendment, to protect all the privileges and immunitise of citizens of the United States, whatever they were? Under the general clause giving Congress authority to carry out and protect whatever powers are vested in the United States, if there was such a thing as a citizen of the United States, which the Senator will of course admit, whatever his privileges and immunities were, was not the Government of the United States bound to protect them everywhere?

Mr. EDMUNDS. That is what I have been trying to show for half an hour, in the best way I could.

Mr. TRUMBULL. Then, if the Senator assents to that, I desire to ask him whether the privileges and immunities of a citizen of the United States were not precisely the same before the adoption of the fourteenth amendment, and if not, wherein do they differ?

Mr. EDMUNDS. My friend sees where he is coming out, and so I will wait a moment before I answer the question in form. I say, and have endeavored to maintain, that the United States was bound, is bound, and always must be bound, like every other sovereign Government, to protect every right that it gives to its citizens. There can be no doubt of it. That is precisely the position upon which I stand. But what I said was that a citizen only became a citizen of the United States, under the language of this Constitution that I have read, through the fact that he was a citizen of a State, to begin with, except in the case of naturalization, and then he became, by the act of the nation, a citizen of the State; that the national citizenship was the consequence of the State citizenship, and therefore that the privileges of a national citizen must always be measured by, and controlled by, the rules that applied to State citizenship; and hence if the State of South Carolina wished to enslave a portion of its citizens, if any citizen of another State chose to go there and be enslaved, if he came within the description of the enslaved persons, he must take his chance and the Constitution could not help him. That is the position. As I go along I will answer the other part of the question of my friend, and he will presently see what the answer is.

Now, sir, to put this question at rest as to what was the nature of national citizenship, whether it was fundamental because the person

was an inhabitant of the nation itself, or born in it, or naturalized to it, or whether it was the mere consequence of the fact that he was a citizen of a State, the thirteenth and fourteenth amendments came in. The fourteenth amendment declared that—

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

The order of the language of the old Constitution is reversed absolutely. Instead of declaring, as it did before, that a citizen of a State was entitled to the privileges of a citizen in another State, it declared that every person born within the territory of the United States was a citizen of the nation, and, by consequence, a citizen of any State in which he might from time to time reside.

Mr. TRUMBULL. If the Senator will allow me again, did that do anything more than give citizenship to a class of persons who before that time did not have it, and did it give anybody any privileges and immunities beyond those possessed by a confessed citizen of the United States before its enactment?

Mr. EDMUNDS. I declare most emphatically that it did; that it gave the man who had been a citizen of Vermont or of Massachusetts before, and who under the old Constitution, becoming a citizen of South Carolina, only had such rights as the constitution of South Carolina chose to give to their citizens, either to be a slave or a free man, or whatever condition they might impose upon him, a national citizenship as an original and fundamental right that no State could regulate or destroy or impede, because it says so; and as a consequence of that, it said wherever he went he became a citizen of the State to which he emigrated.

Mr. TRUMBULL. Now, will the Senator allow me to ask him one other question right there?

Mr. EDMUNDS. With great pleasure.

Mr. TRUMBULL. I ask him whether, before the thirteenth amendment, he holds that a native-born white citizen of Vermont could be reduced to slavery in South Carolina, without doing it in defiance of the Constitution of the United States?

Mr. EDMUNDS. I say he could, upon the doctrine of the decisions that had been made. If I had been the judge I should have declared that the preamble and terms of the Constitution secured the freedom of every man already free, white and black, everywhere. I would not have declared that a black man by the Constitution of the United States could be made a slave anywhere.

Mr. TRUMBULL. Does the Senator mean to affirm that any decision was ever made that a white man could be made a slave?

Mr. EDMUNDS. No, sir; I do not mean to affirm that there was any such decision.

Mr. TRUMBULL. Then there is no decision to that extent.

Mr. EDMUNDS. My friend and I are now talking about principles. I say, under the Constitution, as it was before these amendments, the right of a white man and a black man alike residing in the State of South Carolina, and becoming citizens of it, depended upon the laws of South Carolina and its constitution, and if a majority of the people of South Carolina chose to reduce my friend and me to slavery, if we were citizens of that State, the national Government could not help it. I say that upon the principle of the decisions that have been made, not upon the constitution as I would have construed it myself; and I say that it was to correct that wrong and dishonest and base construction that was put upon this instrument that this amendment was introduced, not as a mere paraphrase of what had been enacted before, but as a fundamental security of a national right which should be supreme everywhere, and against which no State constitution or State legislation or usage could in the slightest degree prevail.

Mr. TRUMBULL. If the Senator will allow me, we both agree that we would not have made such a decision under the old Constitution; but the Senator now puts it upon judicial decision, that a white native-born citizen of the United States might have been reduced to slavery in another State. Now, I ask him if the judicial decisions that sanctioned the reducing to slavery of a human being were not all based upon color, their being persons of African descent, and if there is any decision anywhere intimating that a white citizen of Vermont or Illinois, being a citizen of the United States, could ever have been reduced to slavery in any of the States of the Union?

Mr. EDMUNDS. Mr. President, I have already said that all the decisions upon the subject of slavery as such, which is only one form of depriving a man of his liberty, were based upon color. But I assert that the Supreme Court of the United States under the old Constitution has solemnly decided that those great words in the fifth article of the old amendments, that no man shall be deprived of life, liberty, or property without due process of law, did not prevent a State from depriving a man of life, liberty, or property without due process of law; that it was none of our business if they did; that we had no power to protect a man against a violation of his liberty or his life, because the Constitution of the United States or of his own State prohibited it; he must look to his own State for redress, and that we had no power to interfere. Therefore I say, if the Constitution of the United States did not protect the citizen of Illinois against illegal imprisonment, being white, and the courts of the United States had no power to interfere and defend him, then the people of Illinois, if they had chosen, could have kept him in prison forever; they could have taken him to their corn-fields and compelled him to labor; they could have made him a slave.

So I am justified in saying that the decisions under the old Constitution in principle and in effect completely cover the proposition that it was not in the power of the United States to defend the right of a citizen of the United States to life, liberty, or property, against the invasion of it by any State or by any person in a State with or without the authority of its laws; and the reason was, as I have stated, that the citizenship which draws to it protection, which draws to it the privileges and immunities which have been spoken of in the Constitution, and which we all agree include the right to life, the right to liberty, the right to property, the right to freedom from all interference without due process of law, afforded no protection, because that citizenship rested upon State authority, and, only as a consequence of that State authority and growing out of it, had a national character. That being known, the fourteenth amendment, not being a mere empty dream or an empty assertion of an old principle, declared that every person born in the United States shall first and always be a citizen of the nation, and second, and as a consequence, be a citizen of the State in which he resides.

Now, Mr. President, to return to the point I was speaking upon—and in my discussion with my friend I have got a little out of the order in which I intended to have spoken of these subjects—this Constitution has always been a Constitution of the people, and has in a thousand ways provided for the protection of the people, imposing duties, guarantying rights, regulating affairs, prohibiting action to States, and so it has, in a great variety of instances in the course of these powers and prohibitions, been applied to the people directly to effect its purposes and to defend its powers, and wherever and whenever that occasion has arisen it has always been done precisely upon the principles that this bill contains, that of dealing with the people, that of enacting laws, and never that of either by advice or protest, warfare or proclamation, dealing with the States.

I have as a matter of curiosity gone through the ancient statutes as to crimes in order to see, as my friend from Illinois thought we were making a great change in the Government, how largely the founders of the Government, in enacting its crimes acts, have gone into the constant intercourse of the people in their business relations, how much it has done that might have been done by the States, and in many instances how much it has done that has always been done also by the States acting upon the same class of subjects. Here are some of them:

"An act to punish the negligence of steamboat officers," not on the high seas alone, but anywhere in the United States, by which any person should be injured. Nobody disputes that a State can pass laws to punish that. Nobody disputes that the State laws give rights of private action to people for negligence of steamboat owners.

"The embezzlement of goods of the United States." There is a power which it might be said was necessary to protect the interest of the United States. That is true; and while it is perfectly true, it would be lawful for the States to, and many of them do, have statutes under which anybody can be convicted for embezzling the goods of another, whether the United States or a foreign Power, or any person having property within their territorial jurisdiction.

"The forging of powers of attorney to transfer stocks." There is a case of a purely private crime between man and man, nothing else. The power of attorney to transfer stocks is not a Government security. It has no more relation to it than any other power of attorney has, except that the Government security happens to be the subject to which the power of attorney is applied, and it is punished as a private cheat, as all species of counterfeiting and forgery of personal documents are. Nobody ever questioned the propriety of that legislation; and at the same time all the States, without exception, have enacted and enforced laws against the forgery of precisely the same instruments; and yet nobody ever heard that the Union was about to fall to pieces because the United States had invaded the sacred right of the State to regulate the conduct of its own citizens about crimes of this character.

"Conspiracies to cast away vessels," not on the high seas merely, but anywhere within the jurisdiction of the United States.

"Conspiring to plunder stranded vessels." Plundering stranded vessels within the body of a county of a State, which in every State in the Union, I have no fear in saying, is an offense against State laws; and yet nobody has been alarmed at that legislation.

"Assaulting an officer." And here, sir, is the shibboleth on which my friend from Illinois has staggered and fallen. The committee put into this bill an amendment providing that if any man should assault an officer unlawfully and wickedly, or rather conspire to assault him, while in the performance of his duty, he should be amenable to punishment. My honorable friend from Illinois has said that this for him spoils the whole bill.

Mr. TRUMBULL. Not at all. I am in favor of that.

Mr. EDMUNDS. I am very glad that my friend has experienced a sudden conversion. Let me read from his remarks.

Mr. TRUMBULL. While the Senator is hunting it up, I will say that my position was, and I think he will find it the same in the paper—if it is not I did not express what I intended—that the Government had the right to protect its officers in the discharge of their duties; but that the Government of the United States had no right to punish for a conspiracy to cut down the Senator's apple trees in Ver-

mont, when he is here as a Senator discharging his duties. The bill as proposed to be amended provides for punishing a conspiracy to injure the property of another while the officer is engaged in the discharge of his duties a thousand miles away, if you please, and having no connection with the discharge of his duties.

Mr. EDMUNDS. I am immeasurably happy that in the short course of thirty-five or forty minutes I should have found one convert; I will not say made one. Here is what my honorable friend said:

"I had stated that I did not suppose the Senator from Vermont was in favor—and I might say I was quite well satisfied he was not—of entering the States to pass a general criminal code for the States, or a general law for the redress of civil injuries in the courts in cases of contest between individuals, where the Constitution and laws of the United States were not directly encroached upon. Assuming that to be so, and that that is the opinion of every member of the Senate, I should like now to get the attention of Senators a moment, and especially of the lawyers of the body, to a single amendment in the seventeenth line of the second section. The Judiciary Committee propose to insert these words, 'or while engaged in the.'"

Now, let me read the text of the bill:

Or by force, intimidation, or threat, to induce any officer of the United States to leave any State, district, or place where his duties as such officer might lawfully be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, &c.

That is the way the bill read in the first place. The committee propose to amend that so as to make it read:

Or to injure him in his person or property on account of or while engaged in the lawful discharge of the duties of his office.

Now, says the Senator from Illinois:

"I think that changes the whole character of that section. Let me show how.

"As the bill originally stood, as it came from the House, it provided for the punishment of a conspiracy to injure a person holding a United States office in his person or property on account of his lawful discharge of the duties of his office. That is legitimate. I can vote for a law that punishes a conspiracy to injure a United States officer on account of his lawful discharge of the duties of his office. But what is the amendment? Its effect is to punish a conspiracy to injure his property 'while he is engaged in the lawful discharge of his duties.' Is not that very different?"

And then he proceeds to illustrate.

Mr. TRUMBULL. That is exactly what I say now.

Mr. EDMUNDS. Very good. Let us see what kind of a law we have now. The honorable Senator from Illinois made no distinction, for none could be made, in his argument between the case of assaulting the officer while engaged in the discharge of his duties or injuring his property. He put it upon the ground that it must be on account of the act interfering with the discharge of his duties which made the case criminal for our punishment. Now, let us see. Here is the act of 1790, old enough to be outlawed, perhaps, in the estimation of my friend, but it is in force yet:

"If any person or persons shall knowingly and willfully obstruct, resist, or oppose any officer of the United States, in serving or attempting to serve or execute any mesne process or warrant, or any rule or order of any of the courts of the United States, or any other legal or judicial writ or process whatsoever, or shall assault, beat, or wound any officer, or other person duly authorized, in serving or executing any writ, rule, order, process, or warrant aforesaid, every person so knowingly and willfully offending in the premises shall, on conviction thereof, be imprisoned not exceeding twelve months, and fined not exceeding $300."

Mr. TRUMBULL. That is a very proper act.

Mr. EDMUNDS. We have had, Mr. President, for eighty years a statute which made it a crime to assault any officer while engaged in the performance of his duties, not on account of it, but to injure him in his person while he was engaged in the performance of his duties. Now, my honorable friend says that this change, using the same words and only changing the language so as to include property as well as person, is a great departure and alters the whole principle of the bill.

This is not the whole of my friend's connection with this thing, and I am sorry that he should have been betrayed suddenly into making the opposition to this change that he did, because only three years ago, as I reminded him on that occasion, he himself, as a member of the Judiciary Committee, heartily concurred in and assisted to report a provision of exactly that same character, and which, I think I am safe in saying, at that time met the approval of the Senate from members of all parties and without any differences of political opinion affecting it at all. Here are the sections which my friend's committee reported with his concurrence, the sections which he and I voted for when they were amended in a part of their phraseology. The first making it a crime "if any officer shall be, while in the performance of his official duty, unlawfully assaulted, beaten, or shall have his property unlawfully taken, injured, or destroyed while engaged in the performance of his official duty."

The very language of the amendment which we have proposed to put into this bill was borrowed. I do not mean by saying "borrowed" to say copied from, but the idea was borrowed from our own discussion and recommendation in favor of that bill—which did not become a law, not because it was defeated, but because it was not finally acted upon—in which and for which we had the able and vigorous assistance of my honorable friend. I thought, therefore, that the committee might be justified, acting upon the traditions of the old statutes, acting upon the opinion of my friend so recently expressed to us, in making this amendment. I suppose that when he opposed this amendment the other day, as the Globe certainly says he did oppose it; (for he said that it changed the whole character of the section, and he could not go for it,) my honorable friend had forgotten, in the hurry of the ten thousand things he is pressed with, that this very subject of

securing an officer in person and property from unlawful molestation while he is attending to his duties was one which had met his cordial approval, as I think it ought the approval of every one. But, Mr. President, I am taking too much time with that.

As I have said, in all or nearly all of these instances, and I have only given a few of them, where the United States has exercised criminal jurisdiction over the acts of citizens as between each other, in order to carry out the protections which the Constitution has given to the operations of the Government and to the rights of citizens under it, the States, at the same time, as States, have had a criminal code which covered almost completely the same class of subjects.

Mr. TRUMBULL. Does the Senator mean to say that I ever expressed any opinions about a bill that he has referred to as having been reported here? I presume we considered it in the Judiciary Committee, but it was never discussed in the Senate. I do not think I ever said a word about it. I do not recollect the circumstances about it now. It was reported by the Senator from Vermont. I may have given my acquiescence to the report without examining it as particularly as I ought to have done; but that I ever expressed any opinions in the Senate in favor of a proposition that would authorize the punishment of a conspiracy to injure the property of a man simply because he was an officer of the United States, when it had no connection with the discharge of his duties, I deny.

Mr. EDMUNDS. Well, Mr. President, on that denial it is a question between the record and the recollection of my friend; that is all.

Mr. TRUMBULL. The bill was not reported by me, was it?

Mr. EDMUNDS. No, it was not; it was reported by the honorable Senator's committee, reported with his concurrence, and the Globe shows no dissent; and I happen to know personally that it was reported with his concurrence. It was taken up in the morning hour for consideration on the 29th of June, 1868, toward the end of the session, I have no doubt in the presence of my friend, who always attends, during the morning hour certainly; and it was discussed and amended by inserting in the second section words which by a clerical mistake had been omitted, the very words which we put into this bill, "while in the performance of his duty;" and that amendment was agreed to by the Senate.

Now, Mr. President, it is not my purpose to find fault with my honorable friend from Illinois for changing his opinion, if he has seen fit and good ground to do it; but I think he ought not to have said the other day that this amendment which we propose changed the whole character of that section and was without any precedent to support it.

I was saying when my friend interrupted me just now that from the foundation of the Government, over this class of subjects—because the whole spirit of this discussion turns upon the question whether the national authority has a right to deal with its citizens as citizens, and not with States, or whether it must be left to the States alone to act upon her citizens in enforcing the national Constitution—embracing almost one half of all the business relations of men in the country, embracing a thousand different operations and a thousand different situations of society, the United States have had and administered a criminal code to protect the powers and to execute the duties which the Constitution has confided to it. And in doing this they have not either "invaded" or "entered" any State, but they have exercised the constitutional omnipresence of sovereignty, and carried forward the beneficent sway of justice among the people, for the people, and by the people.

The Government has had a criminal code that acted directly upon the people, upon whom alone it could act. That has not been an invasion of the rights of the States; on the contrary, it has been in aid of the good order and stability of the society of the States, and at the same time the States by their own laws and in their own methods and through their own courts have punished the same classes of offenses; and the Supreme Court of the United States has more than once been called upon to decide whether a State could, in view of the fact that the United States had a code against a particular crime, also make the same act a crime; and it has always been decided that the sovereignty of the two governments was in these respects independent and concurrent; that they both could act over the subjects that were committed to them, and therefore that a citizen might properly be punished for violating a State law and a United States law in doing the same act.

We have had that as to passing counterfeit money. The State of Ohio had a statute against passing counterfeit money. A man was indicted under it, and he defended upon the ground that that was a crime by United States law and that the jurisdiction of the United States over it was exclusive. The Supreme Court of the United States decided that the State had a perfect right to pass laws against counterfeiting money as well as against the passing of counterfeit money. Afterward a man was indicted under the laws of the United States for passing counterfeit money; not to punish him in the language of the Constitution for counterfeiting coin, but out of the language of the Constitution to punish him for uttering counterfeit coin or a counterfeit note, whatever it may have been; and the question was again made that the United States had no right to invade the function of a State and punish the passing of counterfeit coin because the Constitution did not name that, and the State laws operated upon it. Again the Supreme Court of the United States decided that it was perfectly within the constitutional power of Congress to do that thing.

So, sir, as to the fugitive slave law. There the Constitution had not declared, in terms, whose duty it should be to see to its enforcement. The United States had passed a complete code upon the subject. The State of Illinois had passed a code upon the subject, and had provided for the punishment of any person who should harbor or secrete a fugitive slave; and the suggestion was made that my friend from Illinois made the other day, that this was changing the whole character of the Government to have the States interfere where the United States could, or to have the United States interfere where the States could. But the court say:

"But admitting that the plaintiff in error may be liable to an action under the act of Congress for the same acts of harboring and preventing the owner from retaking his slave, it does not follow that he would be twice punished for the same offense. An offense, in its legal signification, means the transgression of a law. A man may be compelled to make reparation in damages to the injured party, and be liable also to punishment for a breach of the public peace in consequence of the same act; and may be said, in common parlance, to be twice punished for the same offense. Every citizen of the United States is also a citizen of a State or Territory. He may be said to owe allegiance to two sovereigns, and may be liable to punishment for an infraction of the laws of either. The same act may be an offense or transgression of the laws of both. Thus, an assault upon the marshal"—

Here comes this dreadful trouble again about assaulting the marshal while in the performance of his duty—

"Thus, an assault upon the marshal of the United States, and hindering him in the execution of legal process, is a high offense against the United States, for which the perpetrator is liable to punishment; and the same act may be also a gross breach of the peace of the State, a riot, assault, or a murder, and subject the same person to a punishment, under the State laws, for a misdemeanor or felony. That either or both may (if they see fit) punish such an offender cannot be doubted. Yet it cannot be truly averred that the offender has been twice punished for the same offense; but only that by one act he has committed two offenses, for each of which he is justly punishable. He could not plead the punishment by one in bar to a conviction by the other; consequently, this court has decided, in the case of Fox *vs.* The State of Ohio, (5 How., 432,) that a State may punish the offense of uttering or passing false coin, as a cheat or fraud practiced on its citizens; and in the case of the United States *vs.* Marigold, (9 How., 560,) that Congress, in the proper exercise of its authority, may punish the same act as an offense against the United States." (Moore *vs.* The People of the State of Illinois, 14 Howard, 19, 20.)

Now, sir, I think I have demonstrated, though I have taken, perhaps, too much time to do it, that over all the rights and over all the duties and over all the guarantees that the Constitution of the United States enumerates, the power of the United States, by legislation, by punishment, by any of the methods which legislation may resort to, to enforce constitutional duties and obligations may and must act directly upon the citizen; and that it is entirely immaterial whether the State may or can do the same thing for the same act or not; and, therefore, that it is no objection to the constitutional exercise of power by Congress that the States themselves in the case of these disorders in the South may, if they will, punish the same things according to their own laws. This has been carried so far in the statutes of the United States passed by the founders of the Government that in cases of admiralty and maritime jurisdiction, (which would seem by the Constitution to have been exclusively confided to the national authority and the national courts,) the ancient statutes conferring jurisdiction and setting up courts to practice that law, expressly provided that the acts of Congress and the authority of the courts under them should not be construed to exclude the common law or prohibit the courts of the States to grant relief in all those cases in which the common law was competent to afford it. So that to-day, although the courts of the United States in one form of procedure—procedure *in rem*—have exclusive jurisdiction over maritime matters, the common-law courts of every State have ample jurisdiction of the same matters, by suits *in personam* between parties; and yet we are told that this attempt of the United States to punish crimes of this character is a new thing; that we are changing the character of the Government by endeavoring to repress tumults and insurrections which are leveled against citizens in order to deprive them of that equal protection and that right to seek justice which the Constitution, from the nature of it, guarantees to them, and which it in express words gives to them.

Now, sir, let us see what rights these new amendments have given to citizens; and I am sorry to have troubled the Senate so long in discussing this general principle; but inasmuch as the whole constitutionality of our legislation has been made to turn, as I have said, upon the denial of our right to exercise direct powers over the citizens as such, I have felt justified in demonstrating, as I think I have, from history, from the Constitution, from the statutes, and from the decisions, that this pretense is a sheer delusion.

Now, what do these amendments provide?

The thirteenth amendment provided that there should be neither slavery nor involuntary servitude except for crime. That was a prohibition. It did not name a State at all. Under the old decisions, to which I have referred, protecting life, liberty, and property against invasion without due process of law, Democratic Senators and my friend from Illinois might have contended that this was only a prohibition against slavery under the authority of the United States, and that any State could now deprive a citizen of his liberty for the reason that the thirteenth amendment only operated as against the Government of the United States as it was held under the old one which I have read.

But that has not been contended, and everybody knows that it would be scouted, for there is added—if there could have been any doubt about it before—the provision that "Congress shall have power to enforce this article by appropriate legislation." Therefore, when the prohibition against slavery was enacted and

the power was expressly put into the hands of Congress to carry out that enactment, to see that it was made effectual, was it not the right and the duty of Congress, too, to the last point of its power, to protect the liberty of all people wherever it might be assailed by that form of crime? Nobody questions it. Even my honorable friend from Ohio who sits farthest from me [Mr. THURMAN] I think will admit, I believe he did the other day—I do not know that the conversation was public, although it was a business conversation—that under the thirteenth amendment there is no question but that Congress may take all necessary means to prevent the reëstablishment of slavery.

Mr. THURMAN. Will my friend allow me to state exactly what my view is? I have already stated it, although not in this debate. In my judgment, that provision that Congress shall have power by appropriate legislation to give effect to this article which is found in each of the thirteenth, fourteenth, and fifteenth articles of amendment confers no power upon Congress that would not exist in Congress if those words were stricken out of the Constitution. They are not a particle broader than the clause in the original Constitution that Congress shall have power to pass all laws necessary and proper, &c.; and this very word "appropriate" is derived from the opinion of Judge Marshall in McCulloch *vs.* Maryland, in which he says that Congress, under that authority to pass all proper and necessary laws, could use any appropriate means; and it is also said in the same case that Congress would have all the powers that it now has if that clause itself were left wholly out of the Constitution.

Mr. EDMUNDS. Very well; suppose that is so, inasmuch as the clause is in, have we not all the power that it gives? That is the point. If we had the power, supposing the clause were out, I hope my honorable friend does not contend that we have it not because the clause is in. Does he?

Mr. THURMAN. No, I do not.

Mr. EDMUNDS. Very good; then my purpose is answered; and let me tell my friend that there is a wide distinction, if he will study the Constitution a little more closely, between this phraseology of the second section of the thirteenth article and the old phraseology. This says that "Congress shall have power to enforce this article by appropriate legislation." That said that Congress should have power by all necessary legislation to carry into effect the powers therein granted. The prohibitions upon the States were not granted powers; they were denied powers; not denied powers of the national Government, but denied powers of the States; and therefore the strict language of the old grant of power to legislate did not cover those cases at all.

Mr. THURMAN. The Senator will pardon me for saying that I think I could convince him that there is no difference; but it would require an argument, and I do not want to interrupt his speech.

Mr. EDMUNDS. My friend knows that when he goes to an argument or threatens one I am always convinced at once. [Laughter.] But the chief point now is, as my friend agrees, that here is, whether necessary or unnecessary, an express grant of power to us, the national Legislature, to defend the rights of citizens of the United States and all inhabitants of the country, whether citizens or not, against slavery. Now, how are you going to do it? Are you going to do it by passing a proclamation to the State of Georgia when she may choose to reënslave her negroes? Or, are you going to do it by making war upon her? Or, are you going to do it, as we by this bill do it under the fourteenth amendment, by declaring that any man who infracts that article shall be punished?

I take it, there is only one answer to that question. If any State should undertake to set up slavery, or any man in a State should undertake to set it up, (because the old theory was that the States did not set it up at all, that it was a kind of hereditary personal right that came down from the patriarchs in some undefined way,) my friend from Ohio would be among the most earnest opponents of any legislation which should address itself to the State of Georgia. He would say, "The State of Georgia is not in fault; she cannot as a State be in fault at all, because her officers, her Legislature, her Governor, her judiciary, all together as such, have no power or authority to do anything of the kind, and their acts, therefore, are utterly void, and the people in their collective capacity are not responsible for them at all; and you have no right to make war upon the people because their officers, their mere agents whom they have selected, have exceeded their jurisdiction and authority. Go," he would say, "to the guilty ones. Address yourselves to the criminal who has violated this article of the Constitution and the statutes of the United States by doing that which the Constitution forbids."

Thus you will have enforced the thirteenth article of amendments and secured liberty and punished slavery. It would be an extreme case which could justify any other answer; and inasmuch as slavery is so odious to mankind now, gentlemen of all political shades would acquiesce, and there would not be a debate or a party division upon the passage of a bill which should provide for the punishment of the act of reducing any man to slavery, under the thirteenth amendment. Nobody, I venture to say, would have been heard to open his lips to condemn such legislation, however much some portion of the people might desire to see slavery restored, or to question the propriety or the constitutionality of enacting it.

But when you take the next step and come to the next article of the Constitution, which secures the rights of white men as much as of colored men, you touch a tender spot in the party of our friends on the other side. If you wish to employ the powers of the Constitution

to preserve the lives and liberties of white people against attacks by white people, against rapine and murder and assassination and conspiracy, contrived in order to drive them from the States in which they have been born or have chosen to settle, contrived in order to deprive them of the liberty of having a political opinion, contrived for the purpose of driving them from a city or town where they have endeavored to carry on a peaceable and lawful business or to cultivate the soil, then the whole strength of the Democratic party and all its allies is arrayed against the constitutionality and propriety of such an act.

Sir, what did the fourteenth amendment say, taking it a little in detail? The first section of it is all that I need to read. It has four distinct and separate clauses. The first is the one upon which I have commented, and I will now only state it:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside."

I have said prematurely, in answer to my friend from Illinois, and out of the order of the proper discussion of this subject, all that I will take the time to say about it. The next is the provision that:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

There is a direct prohibition to the State; it is a direct prohibition against the making of a law; it is a direct prohibition against the enforcing of a law; and that perhaps brings me to the question here as well as anywhere else, what is a State?

My honorable friend from Ohio [Mr. THURMAN] said yesterday, my friend from New Jersey [Mr. STOCKTON] said the other day, and everybody says on that side, that a State is the legislative department, and that all the prohibitions and commands of this section are addressed to the law making power of a State, and that any omission of the Governor to give rights under his department, any omission of the judiciary to grant rights under their department, any violation by either of these departments of a State government of any right secured by this section, is not a violation by the State, for that must be by the law-making power. Now, apply it to this:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

Not "abridge the privileges and immunities of citizens of one State going to another," as the old language was, but "which shall abridge the privileges and immunities of citizens of the United States," whether they are citizens of one State or another—absolute and complete. But what is the State? Is it the Legislature? It is as to making law, with the aid of a Governor. As to enforcing a law, is the Legislature the State? How do Legislatures enforce laws? I had been taught in my little reading and experience in the profession of the law that the enforcement of the law belonged to the judiciary and the executive combined. I had never heard before that it was a part of the legislative functions of a government to enforce laws; and yet, if my friend is right, although the very word "enforce" is used in this prohibition, it is after all only a command to the members of the Legislature that they shall not enforce any such law; and therefore the executive and the judicial departments of the State are not prohibited from enforcing any law they please which violates the privileges and immunities of citizens of the United States.

Why, Mr. President, this is absurd; it flies in the face of the very language, it flies in the face of everything we know of the nature and constitution of a government, be it State or national.

Mr. THURMAN. Will the Senator allow me to interrupt him at this point?

Mr. EDMUNDS. With the greatest pleasure.

Mr. THURMAN. I do so because the Senator has attributed to me quite a mistake.

Mr. EDMUNDS. I thought it was quite a mistake.

Mr. THURMAN. Either the Senator did not understand me, or I do not understand him. The language is, "no State shall make or enforce any law which shall abridge the privileges and immunities of citizens." He will admit at once that it is only the legislative power in a State which can make a law. He will also admit at once that the courts and the executive power of the State do not enforce laws that are not made by the State, or not recognized as law by the State, being the common law of the State. Therefore, when it is said there that "no State shall make or enforce any law," it can only apply to laws which are made by the Legislature of the State, or to the common law of the State.

Mr. EDMUNDS. I do not see that that changes it. That is exactly what I said. Of course, if the Legislature do not make a law which abridges the privileges or immunities of citizens, then there is no such law that the other departments of the State government can enforce. But suppose the Legislature does make a law which abridges the privileges of a citizen, and suppose that the judicial and executive departments of the State government undertake to put it in force; what then? According to his argument you can only punish the Legislature; you can make war upon them or you can indict them, or do whatever our friends on the other side think would be adequate to the end; and I should like any one of them to be kind enough to point out what he would do in such a case. What, then, was the use of putting in this prohibition against enforcement? None at all in that case. I repeat, with all respect to my friend, that an argument of that kind borders, if he will pardon me for saying so, upon absurdity.

The enforcement of laws, as I have said, does not belong to the legislative department

at all; it belongs to the other departments; and as to the enforcement of law, the other departments are the government; they are the whole government. Why, sir, what a position we should be in if this honorable Senator's position were sound! Look at our case with England during the rebellion. There were the acts of Parliament which denounced punishment against the fitting out of expeditions against friendly Powers; there was the executive department, the Crown, armed with all its constables and sheriffs and its military power; there was the judiciary in the full exercise of its functions. Through the fault of the Executive and through the fault of the judiciary expeditions were fitted out; they did make war upon our commerce; they did violate our rights. "Now," says my friend, "the Crown and the judiciary of England are not the Government; they are to blame, but they are not the State; the duty of executing the statutes of England does not belong to them, or if it did, they are not responsible for not doing it; the power of England is in the Parliament; and inasmuch as Parliament had done all that was necessary for it to do before, as the statutes were there, England is not responsible at all." That doctrine cannot be maintained. A State is a corporation; it exists only, in contemplation of law, as an organized thing; and it is manifested, represented entirely, and fully in respect to every one of its functions, by that department of its government on which the execution of those functions is respectively devolved. Therefore, if it is the duty of the executive and judicial departments of a State to enforce a law and they do not enforce it, the State does not enforce it. If it is their duty not to enforce a law and they do enforce it, it is the State that enforces it.

The next provision is the one that "no State shall deprive any person of life, liberty, or property without due process of law." Under the old Constitution a similar provision existed, not using the word "State," and, as I have already stated, the courts decided that that prohibition did not apply to the States at all, and that therefore it only applied to the United States. Hence this clause in the amendment, which also Congress is to enforce by appropriate legislation, "no State shall deprive any person of life, liberty, or property, without due process of law." So that, taking the two clauses together, the old one and the new one, you have in the Constitution of the United States a sweeping declaration that neither the United States nor any one under them, nor any State nor any one under it, shall deprive any person of life, liberty, or property, without due process of law. Is not that, then, as complete as any language can make it? Does it not cover all the power of the nation in every department of the Government, both national and State? Nobody can dispute it; it says so in terms. Taking the two together, the States are prohibited, the nation is prohibited, everybody is prohibited from denying the rights of citizens to life, liberty, and property, without the regular and due process of law—constitutional law.

Now we come to the next clause, "Nor deny to any person within its jurisdiction the equal protection of the laws." And here, again, after this clause, follows the potent, although my friend from Ohio and my friend from Illinois think the unnecessary, declaration that "Congress may enforce this provision by appropriate legislation." Now, what is a State to do? It is not to deny to any person within its jurisdiction the equal protection of its laws; not the equal making of its laws, which had been provided for before, not the right to life, liberty, and property, which had been provided for before; but it is not to deny the protection of its laws.

What is protection of law? Do I need to weary the patience of the Senate with undertaking to define what is the protection of the law? I take it any, the humblest, citizen in the land knows what the protection of the law is. The meanest criminal in the land knows what it is to violate the protection of the law. I shall assume, therefore, that if there has been any, or if there may be any of the offenses named in this act committed in any State, those offenses will deprive citizens of the United States and every one else upon whom they are committed of the protection of the law, unless the criminal who shall commit those offenses is punished and the person who suffers receives that redress which the principles and spirit of the laws entitle him to have.

"No State is to deny," say the gentlemen. That means, they say, the State in its collective capacity. What part of the State? My friend from Ohio says the Legislature. Then the Legislature, reading it in that way, shall not deny to any person within its jurisdiction the equal protection of the laws. It had said that before. The very second provision in this section declares that no State shall make or enforce any law which shall interfere with the privilege and immunity of a citizen of the United States; and everybody agrees that that privilege and that immunity is the very same thing that is mentioned in other language in the next clause—the privilege of life, the privilege of liberty, the privilege of the acquirement of property. So that, on the theory of my friend from Ohio, a great constitutional amendment, carefully prepared, discussed in both branches of Congress, passed by two thirds of each House, ratified by three fourths of the States, committed the awkward blunder of stating over again, in obscure language, what it had stated in its second provision only four lines above in clear language: that it had said that no State (which can only act through its Legislature) shall make any law which shall do this thing, and when it had, then, coming to the last clause, had restated the same thing in vaguer language, that they should not deny to any person the equal protection of the law. That cannot be maintained. A Legislature

acting directly does not afford to any person the protection of the law; it makes the law under which and through which, being executed hy the functionaries appointed by the State for that purpose, citizens receive the protection of the law.

But they say this is merely a prohibitory section, a mere denial of the right of a State to interfere with life, liberty, and property, and to prevent due redress. What is a denial, Mr. President? Is it merely a refusal in the sense of a man's appealing to the Legislature for a law and being told that he cannot have it; or what is it? It is a security to the citizen that he shall have the protection of law. Although the word is negative in form, it is affirmative in its nature and character. It grants an absolute right, and let me tell my honorable friends who deny it that it is not a chance word; it has been heard of in the law before; it has a history connected with human liberty ever since in Anglo Saxon races human liberty and human rights have existed. The very word has come down from the earliest constitutions, from the very earliest written constitution of civilized liberty, to us as a word of art which carries in it an obligation of a supreme and universal affirmation—a character which makes it the duty of every court and every government over every people which are entitled to its protection to see that they have it.

Now let us see. Here is the ancient charter of liberty which the bold barons, as you know, our English ancestors, wrested from King John; the rich and perpetual product, like our own amendments, of a great struggle for liberty; and in it are contained, in order to grant to the citizen this very protection, and in order to secure to him the duty of all the courts of all England to give it, as they have done, these very words: "*Nulli vendemus, nulli negabimus, aut differemus rectum vel justitiam.*" "We will sell to no man, we will not deny or defer to any man either right or justice."

Under that, not by force of parliamentary legislation, but as giving ever-affirmative rights, performing an affirmative duty, the first slave that set his foot on English soil was set free, because the courts could not deny to him that justice which that charter said should not be denied. And under it, as I have said, in every civilized State, comprising all the States of our nation, and comprising that great commonwealth, or kingdom as I ought strictly to say, from which we derived our law and our history for eight hundred years, until now it is questioned for the first time, it has been the recognized and bounden duty of all courts, and of all executive officers intrusted with the administration of justice and the law, to give that which the citizen was entitled to, to execute justice and afford protection against all forms of wrong and oppression. Why, sir, it has blazed on the forehead of constitutional liberty from that day to this. And yet, now being adopted as the greatest security settled through the course of centuries as a protecting, as an affirmative right in the citizen—those interests of liberty and property and life to which he is entitled—now for the first time it is attempted to be frittered away hy the statement that it is a mere negative declaration, a kind of admonitory prohibition to a State, and that Congress is to invade the rights of the States and the liberties of the people when, these rights being denied, when criminals go unpunished by the score, by the hundred, and by the thousand, when justice sits silent in her temple in the States, or is driven from it altogether, it interposes in their behalf; when the Government of the whole people, through their laws and tribunals, takes in its hand this ancient monument and guarantee of justice now found in its Constitution and applies it as it always has been applied. Why, sir, if I were in any other place I should say—

"O Shame, where is thy blush?"

I am astounded, sir, that what might be called party zeal, an effect of a kind of tacit alliance with these misguided southern men, (not, I hope, in their crimes, but for the baleful objects of their joint political future,) should have blinded our Democratic friends to the history of enactments of this character, and should have led them further than on sober reflection they will willingly go, and further than the people on reflection will be willing to let them go.

Therefore, I take it, Mr. President, that I need not occupy much time in saying that whatever this provision of the fourteenth article guaranties to a citizen, that the citizen is entitled to have; and if he is entitled to have it, how is he to have it? The section answers, he is to have it, in the language of the Constitution, which is the voice of the people, through the legislation of this body. The people have declared that he shall have this protection. The people have declared that the State authorities shall not deny it to him. The people have declared that it is the solemn duty of Congress to see that he has it because they have decreed that "Congress shall have power to enforce the provisions" of this section of this clause "of this article by appropriate legislation." Therefore the Constitution contemplated that whenever an occasion should arise where it was necessary to protect these rights Congress should protect them.

It is impossible to resist the conclusion. Suppose this did change the Government, as my friend from Illinois appears to fear, do you not rather think, Mr. President, that it is a good change? If the Constitution did not before, holding a sovereignty over its citizens, have the faculty of, through its legislative branch, protecting those citizens in the rights that the Constitution gave them, the rights which a common human nature gives them, against any assault by any State or under any State or through the neglect of any State, then it was high time, for the honor of the American name and for the rights of humanity, that the institutions of this country should change.

If, as under the thirteenth article, slavery was a constitutional institution, as it was claimed before, I am sure the people will not be alarmed that a great change has come over the spirit of this Government; and instead of its being a Government of slavery, tolerated or upheld or winked at, it has become a Government of freedom; that instead of its being a Government which should suffer the local authorities of a State to deny the common rights of citizens to any of its people, it has become a Government in which the national power has guarantied it to them, and which it is the duty of the national power, in every honorable and in the most exhaustive sense, to see is fully and fairly enforced and made a practical reality.

If this is the Constitution (and how it can be otherwise in the face of its history and what it says is more than a puzzle to me, an amazement to me; if this is the Constitution) which gives to our people a right to the protection of law, and it is a Constitution which makes it our duty to see that they have the protection of law, what sin are we committing in endeavoring to legislate so that they shall have it? None, sir.

And now what do we propose to do? Some people have imagined, have stated, or hinted, or insinuated in their observations that we were making war upon the States in this bill; that we were overturning the judiciary; that we were resorting to new methods. That is a mistake, a misrepresentation. The bill, like all bills of this character, in its first and second sections, is a declaration of rights and a provision for the punishment of conspiracies against constitutional rights, and a redress for wrongs. It does not undertake to overthrow any court. It does not undertake to make any war. It does not undertake to interpose itself out of the regular order of the administration of law. It does not attempt to deprive any State of the honor which is due to the punishment of crime. It is a law acting upon the citizen like every other law, and it is a law to be enforced by the courts through the regular and ordinary processes of judicial administration, and in no other way, until forcible resistance shall be offered to the quiet and ordinary course of justice.

When you come to the later sections, which are in aid of the first, you have the simple and ordinary provision in the third that, when the laws are opposed, when the courts are in danger of being unable to carry out their decrees, to arrest and punish offenders, the executive arm is to go to their assistance, is to oppose force to force, as is done in every city and county in the country every day, when the occasion for it occurs, under State laws and under national laws, as the Senator from California himself says he demanded to have done in his own State on one occasion by the troops of the United States. When force is to be opposed to the quiet progress of the law the arm of the nation is to resist force with force, is to gather up the offender and turn him over to the court of justice for trial. That is all there is to it. We are not attempting to overturn the judiciary; we are attempting to uphold it. We are not attempting to overthrow the Constitution; we are attempting to uphold it. We are not attempting to interfere with the liberty of the people, unless the liberty to commit crime is the liberty of the people; we are attempting to protect and uphold it.

The fourth section troubles some of my honorable friends very much indeed. It is said, in the first place, that it is unconstitutional, because it authorizes the President in certain cases named to suspend the writ of *habeas corpus*. I feel very clear that it is constitutional in that respect. The Supreme Court of the United States have decided, contrary to what my friend from Ohio [Mr. THURMAN] had supposed, that the Congress of the United States may delegate to the President the power to determine when an exigency occurs which shall call for the execution of some statute. They do delegate powers constantly; not legislative powers, but powers to act in a contingency which the Legislature prescribes or provides for or defines in advance. That was the case under the embargo laws. The President has no power to lay embargoes or to relieve embargoes; he has no power to make war; and yet, under the embargo laws, with universal acceptance in the case that was referred to and shown to gentlemen the other day, the Supreme Court of the United States unanimously decided that it was competent for Congress to vest in the President the discretion to determine in what contingency he should, in effect, repeal the embargoes and in what contingency he could revive them again. So in 12 Wheaton is a case (Martin *vs.* Mott) which, perhaps, I ought to refer to for a moment. On the subject of exercising the military power in calling forth the militia, which is, in the language of the Constitution, confided to Congress in the provision authorizing it to provide for suppressing insurrections and repelling invasions, on the very point upon which we are now speaking, the Supreme Court of the United States unanimously decided that this power could be rightfully vested in the Executive. It says:

"Is the President the sole and exclusive judge whether the exigency has arisen, or is it to be considered as an open question, upon which every officer to whom the orders of the President are addressed may decide for himself, and equally open to be contested by every militiaman who shall refuse to obey the orders of the President? We are all of opinion that the authority to decide whether the exigency has arisen belongs exclusively to the President, and that his decision is conclusive upon all other persons. We think that this construction necessarily results from the nature of the power itself."

And again, which is perhaps a better authority with my learned friends on the other side, here is the opinion of a Democratic Attorney General, given to a Democratic President, on the subject of lending military assistance to

the Governor of California on a certain occasion. Mr. Cushing, the Attorney General, informed the President that—

"It is the function of the President of the United States, indubitably, to decide, in his discretion, what facts existing constitute the case of insurrection contemplated by the statutes and by the Constitution."

And he cites, to support that, the decision I have just read, and the case of Luther *vs.* Borden, the Rhode Island rebellion case, which also affirms it. So that we have not only the practice of the Government since its foundation, not only the action of its Executive Departments, but two solemn decisions of that tribunal of final resort which is to determine such questions, that the power to determine what facts constitute an insurrection when powers are vested in the President, what facts constitute a rebellion, what exigency shall justify him in suspending the laws as to embargoes, in the nature of things belongs to or certainly may by law be vested in that department which gentlemen now seem to have forgotten, but which the Constitution has created for the protection and exercise of the power of the people—the President of the United States.

Therefore, there is no good ground to maintain that this provision of this bill which authorizes the President of the United States to suspend the writ of *habeas corpus* in the case of a rebellion is open to any question as to its constitutionality; and let me suggest to my honorable friend from Ohio that the case of Bollman and Swartwout, which he referred to yesterday, does not decide or intimate that the President may not be clothed with that power. It only declares that it belongs to Congress to withdraw from the Supreme Court of the United States, if it chooses, the jurisdiction to hear a writ of *habeas corpus*, as in some cases has been done since that time. And Judge Story, whose commentaries the Senator read yesterday, instead of stating that Congress has not the power to delegate that authority to the President, speaks of Congress "authorizing" the suspension of the writ of *habeas corpus*, using that term.

Then Judge Story suggests in a query, it is true, afterward, that it seems, as that may be a legislative power, Congress alone would be authorized to exercise it; that is, as I understand him, to exercise the power of providing for the contingency in which and upon which the President should exercise the function of suspending the writ; because it had been contended in Judge Story's time, and it is yet by eminent lawyers, that this is a presidential power altogether, and that without any act of Congress the President under the Constitution is authorized, of his own mere will, subject to his high responsibility to the people, to suspend the writ himself at any time when he thinks the public safety and a case of invasion or revolution require it. I do not myself agree to this last view. Under the English constitution, from which we derived this process, in aid of liberty, the suspension of the writ was, when the occasion demanded it, always authorized by Parliament, and exercised by the Crown under that authority. And in the same manner, I have no doubt, it was designed to be exercised under our Constitution.

So that, when you come to put it in the form of law, there is no ground whatever upon which it can be questioned. The principles of the Government are against the honorable Senators' position; the decisions of the courts are against it; the nature of the power is against it; the philosophy of Government is against it; for the reason that it is much safer to invest the exercise of this power in the President of the United States in times of great public excitement, when the two Houses of Congress are divided into heated parties, and when, therefore, an inflamed majority might attempt to suspend it when the President would not do it at all, than it is to leave it to the partisan passion of factions in Congress.

Mr. BAYARD. I will ask the honorable Senator from Vermont whether he conceives that in the case of the exercise of discretion a party holding a delegated power has a right to commit it over to a third party? He has stated the case of contingency. Let me put him another. Does he conceive that it would be competent for the Congress of the United States to authorize the Secretary of the Treasury to increase the duties on imports fifty per cent. at such time as he should consider the condition of the public Treasury would admit it?

Mr. EDMUNDS. I do not know what answer I should give to that question just now. I will take it into consideration.

Mr. BAYARD. The answer of the honorable Senator is about equal to the usual courtesy he has shown in debate. When I was discussing this bill the day before yesterday he did not hesitate to interrupt me by questions, all of which I endeavored to answer as best I could. He interjected into my speech at that time a very long remark of his own without any reference to the fact of whether it was desirable to me to have it there or not. Now I ask him a question simply proposing to test the accuracy of the principle he is presenting to the Senate and to the country, whether where Congress has discretion it can delegate it to the President or to any other officer of the Government?

Mr. EDMUNDS. I ask my friend's pardon, if he thought my reply was discourteous. As an humble member of the bar, and not having thought of that precise question, I was really in a painful state of ignorance as to exactly what the law was on that point, and candor compelled me to say that I must take it into consideration. I hope my friend did not suppose I objected to his asking the question, or to making any observation upon it he liked. But he certainly is asking a little too much of my courtesy to insist on my answering a question that I do not know how to answer. He really ought not to do that.

Mr. BAYARD. We are all cognizant of the honorable Senator's capacity both to ask and answer questions. He is here discussing a question of this gravity, nothing less than whether the Congress of the United States has the power to delegate its high judgment and discretion, reposed in it for the benefit of the people of this country, to be exercised by a third party, whether an officer of this Government or not. It seems to me that there is a great principle attending that. The exercise of the discretion of suspending the writ of *habeas corpus*, of ascertaining whether the public safety requires it, is something in my opinion that cannot be delegated by the Congress of the United States to any one. They only can suspend that writ, the great safeguard of the people's liberty, when the public safety shall require it, and then, superadded to that, the two occasions of rebellion and invasion. Now I ask, this being a matter of discretion, when the public safety may require the raising of revenues to a greater grade than they were before, whether the Senator would consider it competent for Congress to delegate its discretion to the Secretary of the Treasury to increase the duties upon imports should the public safety require it, and I will superadd, the existence of rebellion and invasion at that time?

Mr. EDMUNDS. Without going to the Secretary of the Treasury to find out what the law is, it is sufficient to say, what I have already said, I think, and that is that the authority which the Legislature may vest in the President of the United States to suspend the writ of *habeas corpus* is not the delegation of a legislative discretion at all, any more than it is the delegation of a legislative discretion to authorize him to expel intruders from the public lands by force, as has been done, whenever he shall think the interest of the United States requires it. I could give my friend a hundred instances where what he calls a legislative discretion, but what I call an executive discretion to act upon a contingency, and in respect to which the person in whom the discretion is confided must be the judge from the nature of things as to whether the contingency has happened, has been delegated, and always must be; and this belongs to that class of cases.

It is a singular commentary upon this hostility to having the writ of *habeas corpus* actually suspended under authority of law, except in the heat of a party debate in and by the two Houses of Congress, that the only time, until the rebellion, when the writ of *habeas corpus* was attempted to be suspended, it was attempted in the very way that my honorable friend wishes to have it, by the party heat of men in the Senate introducing a bill to suspend the writ of *habeas corpus* of their own will, withdrawing from the President any right or discretion about it at all, and they sent it over to the other House secretly, with a confidential message that they hoped they would put it through; and the House spurned it with indignation and contempt. That shows that safety and good policy require that this power should be vested, and in perfect conformity to the course of history: nd to the constitutional declaration of analogous principles where the law shows it has been vested.

Mr. THURMAN. Will the Senator allow me to ask him a question right there, to see if I understand him?

Mr. EDMUNDS. Certainly.

Mr. THURMAN. I understand him to argue that the power can be more safely lodged in the President than in Congress, because of party heats that might exist in Congress at the time the act should be passed to suspend it. Could any act passed by Congress to suspend it have any effect until it was approved by the President?

Mr. EDMUNDS. That would depend a little, as in Mr. Johnson's time, upon how strong the majority in Congress happened to be. I was aware, without my honorable friend reminding me of the fact—I had learned in the course of my studies—that an act of Congress usually required the approval of the President, at least to be submitted to him, and then to be passed, if he did not approve it, by the constitutional majority. But my friend cannot be ignorant of the fact, and, in candor, I think he will confess it, that even in the case of a party majority it would be one thing to pass an act, with the approval of the President, absolutely suspending the writ of *habeas corpus*, where, if he vetoed it, he would be obliged to fly in the face of his party friends, as some Presidents in old times have been weak enough to be afraid of their party—I am glad we have not had any lately—and quite another to refrain from exercising a granted power and to stand by the right, whether particular people in the party or out of it should like it or not. The difference would be very great between a case of the first kind and the passage of a law which should confide to him, in the case of a great public emergency, the discretion and the responsibility of doing a specific act. We know in legislative experience that we confer by authority upon the President, the executive branch of the Government, many powers every year that neither he nor we would enact as a positive thing to be done. Government cannot be carried on in that way.

In the instance I have referred to, the only one in our history of an attempt to suspend the *habeas corpus* by a positive act of Congress, suspending it by force of law instead of suspending it upon a state of facts that was to arise, in the judgment of the executive department of the Government, which is what this bill does, it ignominously failed, as it ought to do. It was passed in the Burr troubles, in 1807, by one party of the country which had control of the Senate, in the heat of excitement, and it was rejected by the same party, or rather another one, in the other House, either from the sound reason that it was the fruit of undue

excitement, or else from a similar passion upon the other side.

Mr. BAYARD. I only wish the honorable Senator would give us a chance to have the same check applied to the present suspension; then the proposition, if made by the Senate, might meet with equal indignation in the House. That is one of the checks on power which our Constitution intended to give.

Mr. EDMUNDS. Perhaps it would satisfy my friend better to have it submitted to our friends in the minority here.

Mr. BAYARD and Mr. THURMAN. It would be in safer hands.

Mr. EDMUNDS. No process that would let one of the members of those bands down there out of jail would be omitted, I have no doubt.

Now, Mr. President, I have finished what I have to say about the validity of this bill, and I come to the objection that my honorable friend from Illinois [Mr. TRUMBULL] and my friend from Missouri [Mr. SCHURZ] have, that we are undertaking to create a case of constructive rebellion, and that we are going beyond the line of safe precedent, the line of constitutional consideration, in undertaking to say that such and such facts shall amount to a rebellion. I do not think it necessary to say that myself. I should be quite as well satisfied, and better satisfied, with the bill as an efficient and powerful measure in a great emergency if it simply declared that if, in the course of these disturbances, a case of rebellion should occur, then and in that case the President, if the public safety in his judgment should require it, might suspend the writ of *habeas corpus* for a limited time. The fact is, this section has accumulated much more in the statement of an existing condition of things than is necessary to make a case of rebellion.

My friends have spoken as if there must be a great civil war, that it must cover a great tract of country, a whole State, or a whole section of States, in order to make a case of rebellion. That is an entire mistake both in reason and on authority. It has been decided by the courts over and over again that what amounts to levying war against the United States does not depend on the number of people engaged in it; they may be one hundred thousand, or ten thousand, or one hundred, or two hundred, as my friend from California says the number is in Alamance county, of the people for whom he has put in so satisfactory a plea for sympathy and consideration, or it may be two; that the levying of war against the United States, or the raising of an insurrection or a rebellion, which is another name for the same thing—an aggravated insurrection is all there is to it—does not in any degree depend upon the number of people who may be concerned in it, nor upon the extent of territory over which it may have sway.

Why, sir, in the excellent times of the Democratic party, a few years ago, they indicted a man for treason and brought him to trial before Judge Grier, up in Pennsylvania, for being present levying war against the United States, where a band—I will not say a band; I have got used to that word by hearing so much said about the Ku Klux—where a body of negroes, not more than one hundred, came in hot haste, as neighbors, to the house of another negro, where an officer was endeavoring to carry him off into slavery, and resisted with clubs and stones and branches of trees (and I do not know but some of them had guns—I presume they had) the marshal of the United States or the deputy marshal, in endeavoring to seize and carry off that man; and Judge Grier told the jury, reciting from all the cases that had been determined on these subjects, just what I have said, (and if anybody doubts it, here is the book.) I do not want to trespass on the patience of the Senate by reading it, that the number of people who were engaged in it had nothing to do with it: that the extent of territory over which they might carry on the operation had nothing to do with it; that treason, the levying of war against the United States, could exist in either case, which, of course, is greater than a mere insurrection or a mere rebellion; and that was the ground upon which the jury found for the poor spectator who happened to be a white man and who heard the tumult and came and stood by; but in order to make an example for the Pennsylvanians, they thought it better to indict a white man who was present, rather than to indict a negro who was busy in the performance. The judge told the jury, as I have said, that the only escape for the man would be upon the fact, as it appeared, that he had not contemplated, as the purpose of his performance, the overthrow of the Government of the United States or the undertaking to overthrow its laws; that his was the mere private object, if he was connected with it at all, of rescuing that particular man from what he regarded as an unlawful arrest. He might have been guilty of aiding an insurrection or rebellion, but the treason for which he was prosecuted was not necessarily the same thing.

Now, therefore, if the purpose of this conspiracy is that which this statute imputes to it—and the statute does not declare that there is any such conspiracy—we have not tried the case in advance, as my honorable friend from California supposes, in putting in his plea for the criminals; we are trying no case; we are legislating as we always do in criminal matters, for future and not for past crimes—it will be, in the contingency named, a plain case of rebellion.

Mr. CASSERLY. I put it to my friend whether he thinks it is fair to say twice, as he has within ten minutes, that I have put in a plea for the Ku Klux. If the Senator listened to me, he knows that is not a fair statement of what I said.

Mr. EDMUNDS. I did listen to the honorable Senator, and I say upon my honor and my conscience that I think it is perfectly fair.

Mr. CASSERLY. Then the fault must be either with my mode of expression, which I do not think is the case, or with the gentleman's understanding.

Mr. EDMUNDS. That may be. I do not pretend to have a very large understanding; and as to the extent of the Senator's power of expression, I will leave him to judge. Mr. President, if I am any judge of the tendency and effect of a speech, whatever may be the sounding of its phrases, however much it may be tinctured with generalizations of horror at crimes, which I have no doubt my honorable friend feels, I think any impartial hearer of what he has said, who belongs to no party—I do not know but that I could leave it to my friend from Missouri, [Mr. SCHURZ,] who assumed rather a neutral ground here; I would leave it to anybody who is a fair judge, and who has no prejudice—would say that the whole tenor and effect of the Senator's speech was a plea for the Ku Klux, for the body that compose it, not a plea for their acts. Do not let the Senator misunderstand me, because I should be very sorry to feel that I had done him an injustice when he has no full right of reply; but he must excuse me for putting my own construction upon the tendency, not upon the object—my friend's objects are, as I must suppose he thinks, always good—upon the tendency of the remarks that he has addressed to the Senate.

Every member of that organization (and I have no doubt that thousands of them will read it) will say to his brother as he meets him in the woods at midnight, or lies in ambush around the house of some citizen to slay him unawares, because only that he is, like myself, a Vermonter and a Republican, as happened within ten days in Florida: "We have some people among our friends at the North who sympathize with our wrongs and sufferings. To be sure they do not wish us to commit these crimes, but they feel that we are wronged. Negro suffrage has been imposed upon us. We have been taxed to build school-houses. We have seen the freedom of worship. We have been compelled to build roads. We have seen this despised and degraded race occupying situations of honor and responsibility. Our friends sympathize with us. They wish we could right these wrongs and grievances by the force of law; they wish that we could wait until we could get into a majority and turn these fellows out by fair voting. But they do not know at Washington and away up North that we are in a minority on fair counting. They do not know that we think the true way to get rid of this question forever is not to wait until the Constitution of the United States is changed under the auspices of the party of our friends there when they get the chance, or repudiated, as their greatest leader says it ought to be; but our best hope now is to do what we are doing; and while they do not sympathize with the method they sympathize with the inducement and they sympathize with the end." That is the position in which my friend will be regarded, I have no doubt, in the States where these organizations have sway.

Mr. CASSERLY. If my friend will allow me, I endeavored throughout to distinguish between the mass of the people and the criminals and guilty men who, as I understand it, now compose these klans. I do not think that one of those men, or two or three or more of them meeting in the woods at midnight or at any other time, if they should ever read my speech, will understand it at all as the Senator from Vermont understands it, unless indeed he should take the trouble to send them his speech as a key to mine. [Laughter.]

Mr. EDMUNDS. As I am not in correspondence with any of them or any of their friends, I would have to borrow my friend's frank to send them down with. [Laughter.]

Mr. THURMAN. I wish to ask the Senator a question, with his permission.

Mr. EDMUNDS. Certainly.

Mr. THURMAN. Does the Senator from Vermont really think, when a Senator rises in his place and states what he believes to be among the causes of these disorders in the South, that that is an apology for them; that that is any proof of sympathy with them? When a Senator gives an account of the condition of the country there, and of what would be likely to excite men's opposition, and thereby enables us to judge what is the cause, is that sympathy with them? Is that an apology for them? If so, I hope the Senator will read the speech delivered by my friend, the Senator from South Carolina, [Mr. SAWYER,] and he will there find a more thorough investigation of the causes of these difficulties than has been made by any Democratic Senator on this floor.

Mr. EDMUNDS. I suppose my friend merely wished to make a speech under the cover of asking me a question, and I have no objection to that; but if he meant it for a question I will answer it. I repeat that I really think, and I repeat that nine tenths of the people who hear me really think that the scope of the speech of the Senator from California, take it from beginning to end, weigh it in gross, weigh it in detail, with the trimmings off, as they say in New England, is a speech which shows sympathy, as I stated before, with the causes upon which these men pretend to act as causes of grievance which he feels as they do, and that it shows a sympathy with the purpose that they have in view of getting rid of negro equality, getting rid of the northern immigration of men who do not bow their knees to them, and think as they think, talk as they talk, and vote as they vote.

I am quite willing to take the responsibility of stating that, not as an apology, I beg my honorable friend to understand, but as a justification of my opinion. My friend from Ohio has the same right to his opinion that I have to mine. He may think that the tendency of the speech of my friend from California—and I

only take that as a type and one of the best of the kind—he may think that the speech of my friend from California and the speeches of his associates are not in sympathy with the causes upon which these organizations pretend to act, or with the designs which they have in view. He may imagine that they have all been devoting themselves to a condemnation, to a discouragement of these things, to an effort to restore law and order in those States, to an effort to have justice administered and to have peace prevail, to an effort to protect citizens of Vermont, or Ohio, or California, who may have a political faith which they were born to and which they believe in, and who may emigrate to some one of those southern States and buy land and settle down upon it in the right which the Constitution says they have, but which, as a fact, they have not at this time: but they shall have it if the power of the Government is strong enough to give it to them, and I think it is, if I can have my way, that they may have the right to settle there and live in peace; that is all.

Now, sir, this is one way or the other. Either our friends over the way wish to repress this condition of things, if they have the power, or they do not; and it seems to be a matter of dispute between my friend from Ohio and myself as to exactly what the meaning of their speeches is. I am sorry that they have not been a little more frank. If there is any legislation to which Congress can resort constitutionally to repress these evils, if they do exist, why do not the honorable Senators propose it? The trouble is that the legislation that they would propose would be what their leaders have proposed before, to go backward, to repeal reconstruction as they call it, to repeal these amendments, to reduce the people of the southern States to the same condition that they were before the war. That is their way of redress. But if you ask them to aid us, if we have the constitutional power, to protect the people of these States in imposing taxes for the increase of education and the diffusion of knowledge, and in the peaceable enjoyment of their homes, when the people who own the soil and the property in order to prevent that taxation and to drive out the people who wish to have the money expended for those purposes, conspire and combine to burn down their school-houses and their homes, to scourge and whip them, to rob, murder, and pillage them, and punish them and drive them away, our friends on the other side find no power under the Constitution, or any occasion, in fact, to take any step of that sort.

The only function which is left to them, if they are to be responsible for action, is either no action at all, leaving the thing as it stands now, either from inability or want of power to cope with it, and thus disgracing ourselves in the face of the world and in the face of the Ruler of the world, or we must take the step proposed by the honorable Senator from Missouri, [Mr. BLAIR,] one of the justly prized leaders of the party, high in the line of promotion, and entitled to its first honors; and that is, to drive out the "carpet-baggers," to drive out the "scalawags," to restore the true order of things, take away the ballot from the negro——

Mr. BLAIR. I ask the Senator where any such expression has ever occurred in anything that I have said? The Senator cannot point to a line or a word of the kind that he is now attributing to me, and I think the Senator should be cautious in attributing language to others. He has no warrant for imputing any such language to me.

Mr. EDMUNDS. If I have attributed anything to the Senator that he has not said I am very glad to be corrected. He wants the language. I have it not before me. I did not profess, and I do not profess in anything more that I shall say, which shall not be much, I assure the Senate, to quote any language of his *verbatim et literatim*. I only repeat that, if I read the honorable Senator's celebrated letter aright, in substance and in effect it was precisely as I have said. If I read the honorable Senator's speech the other day aright, and I think I did, it was in substance and effect what I have stated now, an attack upon what he was pleased to style the "carpet baggers" as being responsible for this order of things.

Mr. BLAIR. I will say that the Senator, in giving the substance and effect of my letter and speeches, is about as unfortunate as he is in attributing to this side of the Chamber any desire to defend the outrages of the Ku Klux, or any other outrages.

Mr. EDMUNDS. Certainly; I thought I had guarded myself against misunderstanding about that before. I have stated to the Senator from California and to the Senator from Ohio that of course every one of my honorable friends is equally opposed to outrages of every kind and to every measure to repress them; and that, I suppose, is why they are opposed to the suspension of the writ of *habeas corpus*, which might result in depriving one of a class of people who might possibly be caught, masked and disguised, in burning a house down from being locked up and not let out by a friendly judge on the spot. They are opposed to outrage; but I repeat that they and their friends throughout the country (but they are not a very large number) are in sympathy, and it is useless to deny it, and nobody does deny it, with what these bands consider to be their cause of grievance. They are in sympathy with the hatred and opposition to the negroes voting. Am I misrepresenting the honorable Senator now, or any of his colleagues?

Mr. CASSERLY. Does the Senator refer to me?

Mr. EDMUNDS. I was referring to the whole body.

Mr. CASSERLY. If the Senator is firing at the flock, that is a very safe way of firing.

Mr. EDMUNDS. I seem to have hit one bird, at any rate. [Laughter.]

Mr. THURMAN. The Senator in a closing speech, to which nobody has an opportunity to reply, makes an assault on his fellow-Senators on this side of the Chamber.

Mr. EDMUNDS. I give my friends the opportunity of interruption and explaining as often as they like.

Mr. CASSERLY. Then, if the Senator will permit me, I challenge him to put his finger on anything that I said in my speech of that sort.

Mr. EDMUNDS. If it is to receive a challenge for anything outside of the Chamber, I am decidedly opposed to it. [Laughter.]

Mr. CASSERLY. I trust I understand my own duty too well and the Senator's prowess too well to venture on any experiment so hazardous as that would be. Now, I call on the Senator to put his finger on any word of mine which authorizes in the slightest degree his accusation that I am in sympathy with the Ku Klux in their hatred of negro suffrage. What did I say on that subject that would warrant such an accusation on the part of the Senator? No one heard me utter such a word.

Mr. EDMUNDS. I cannot even now, when my friend has had an opportunity to explain, exactly find out which side of that question he was on.

Mr. CASSERLY. It is no explanation. I demand to know what word I said that justifies the accusation of the Senator.

Mr. EDMUNDS. Inasmuch as my good friend's speech is not before me, and inasmuch as I took no notes of it, and inasmuch as it contained a good many words, I must decline to lay my finger on the word. I repeat the statement, however, and I hope my friend will not think I mean to do him injustice. He is an adroit rhetorician. He knows as well how to sugar over a fact that it would be a little disagreeable to have stick out very prominently as any man with whom I am acquainted. He is a master of fence in rhetoric; and he must have read largely, I take it, of the writings of that celebrated man who thought that the purpose of language was not always to express ideas, but sometimes to conceal them. If he and his friends are in favor of negro suffrage, let them declare it now. If they are opposed to it and mean to overthrow it, let them say so broadly in the face of the Senate. If they have opinions and designs which they wish to conceal, let them remain silent.

Now, I say again that if there is any position which the Democratic party occupies before the country, and has occupied for the last ten years, which is known and understood of all men, it is that they were opposed first, last, beginning, and end, through and through, always, to the extension of the ballot to the negro anywhere and in any State. Possibly, when I say "in any State," in some one of the northwestern States, I may have stated it too largely. Let me tell my honorable friends that if they would manfully take the position to-day and declare here publicly, and in language that their southern friends could understand, that they are in favor of negro suffrage being preserved as the Constitution preserves it, as a right which no man, Democrat or Republican, Ku Klux or southern, should be permitted to assault with impunity, the list of murders for the next two months would be considerably reduced in the southern States. It is probably true that the list of Democratic majorities would be considerably reduced in the few States where they have them also.

Mr. CASSERLY. The Senator will allow me to say that he still has failed to put his finger on any language of mine that proves me to sympathize with the Ku Klux in their hatred of negroes or in their hatred of negro suffrage. If the Senator is not able to make good that accusation he ought not to repeat it, for the reason that he must know that unless it is true, and clearly true, to accuse a member of the Senate of sympathy with a gang of men who undoubtedly have been guilty of murder and other crimes under circumstances most aggravating is a thing that ought not to be suffered by the Senate.

Mr. EDMUNDS. I do not know exactly——

Mr. CASSERLY. What I mean to say is, that it is a thing which is trespassing on the rights of the Senator who is attacked.

Mr. EDMUNDS. My friend is mistaken if he supposes I have attacked him. I have no attack to make on the Senator. He has just as good a right to his opinion as I have to mine. I am a Democrat in the true sense on that point; that is, a northern Democrat in a Republican State. The southern ones do not think so, I believe. [Laughter.]

Mr. President, I repeat, whether my friend is satisfied with it or not, what I said before, that the whole tenor of the speech of my honorable friend was precisely what I have stated; and that is, that it was a speech of sympathy with the causes—I used before the word "inducements," and if it will please my friend any better I will use that word now—with the inducements upon which these gangs of men and conspiracies, if there are any such, which my friend seems now to confess there are, affect to found their grievances, which are a justification or an apology to them, not to my friend, for the shocking and systematic outrages they commit. And my friend has had the opportunity three times now, in pleading not guilty to that arraignment in the form that he says I made it, to tell us what his opinion on the subject of negro suffrage is, but he has not told us.

Mr. POMEROY. Ask him now.

Mr. EDMUNDS. I have asked him, and I have asked my friends on the other side as a body, one and all, to get up and declare here if they will—and I will give them ten minutes of time each, if the patience of the Senate will allow it—whether they are in favor as a body, as a matter of justice and right, or as a matter of policy, if not of justice and right, faithfully and honorably and fully to guaranty and to

secure to the negro in every State and everywhere the free and uninterrupted right of the ballot.

Mr. BLAIR. I responded the other day to that question when it was asked me by the Senator from Ohio, [Mr. SHERMAN,] in a speech that I had the honor to make. I do not know whether it attracted the attention of the Senator from Vermont or not. I said what I believed to be true, that the people of the South were willing to give a fair trial to negro suffrage, and not to deny to the negroes the right given to them by the fifteenth amendment, until it was found that with that suffrage the institutions of the country could not be preserved, when I believed that constitutional measures would be taken to preserve the institutions of the country, whether negro suffrage was destroyed or not. That is what I said.

Mr. EDMUNDS. Yes, Mr. President; I think I can comprehend the answer, which is not an answer to the question that I asked, as to what the Democratic party was for; but he says he believes that the people of the South are willing to give the experiment of negro suffrage a fair trial.

Mr. BLAIR. Yes; and I added that the trial had been had here in the District of Columbia, where Senators had acquired property, where streets for miles and miles had been laid out at the expense of the city, upon which there were no houses, and they had found it very convenient to take away negro suffrage and the power to rob and destroy the property of the citizens.

Mr. EDMUNDS. So much the better, Mr. President; that is franker still. The position of my honorable friend, and I suppose of his party, is that he is willing that the people of the South should give to negro suffrage a fair trial until it shall be found, as he says it has been now found——

Mr. BLAIR. By Congress, by yourself and others.

Mr. EDMUNDS. To be a failure. The interjection of the Senator is a total error. I understand the Senator. If he will possess his soul in patience he will see that I will not do him injustice. He and his party are willing that their southern friends should allow the negro to have a fair trial, under the Constitution, of voting like other men, until it shall be found, as it has been found, as he wrongly asserts, by Congress, that they are not entitled to it, and that the institutions of the country cannot be preserved by it; that is to say, the Democratic party was willing to give to the southern colored population and the colored population of the other States the right to vote under the thirteenth amendment until last month, when the District government here was changed from a municipal to a territorial one; that is to say, in his judgment, it has been determined and is certain already that the institutions of the country are not safe under the exercise of such a power, and that it ought to be reversed and gotten rid of; and he states it with the frankness that belongs to a gentleman and a man of honor.

Mr. BLAIR. I am sorry to see that the gentleman is not so frank as he is pleased to compliment me with being. I said that Congress had so found. The Senator, among others, had found it necessary to lay restrictions on the suffrage, negro suffrage among the rest, in order to preserve the property of this city from confiscation.

Mr. EDMUNDS. That is an entire mistake, but I am very glad to hear the application of the Senator for mitigation of sentence. Perhaps it ought to be considered a little. He and his friends again are in favor of allowing the southern people (whom he distinguishes from the negro people) to give to the negro people the right to vote until it shall be found that their institutions cannot go on; and he says——

Mr. BLAIR. I dislike to interrupt the Senator, but I will say that he asked me what were the opinions of the Democrats. I simply answered what I believed were the opinions of the southern people, and I told him what I believed their opinion was upon this subject. That is all.

Mr. EDMUNDS. Very good. Now, if my friend will give me part of the time, I will try to state what I understand his position to be.

Mr. BLAIR. Very well; I will not interrupt the gentleman further. I thought he called for the interruption.

Mr. EDMUNDS. Oh, yes; I wished, though, to finish the sentence I was expressing.

Now, Mr. President, the position again is—and I do not wish the honorable Senator, unless he is desirous of withdrawing it, to put himself out of the fair view of it—his position and that of his party is, as I understand him, and if I have understood his letters and his speeches and the speeches of his party friends, what he has now stated again—the variation of the phrase makes no difference—that he is willing that the experiment of negro suffrage shall be tried with the southern people, and by the southern people, if he pleases to have it in that way, until it shall be found that their institutions cannot go on safely with it——

Mr. MORTON. And they are to be the judges.

Mr. EDMUNDS. Do I state my friend fairly?

Mr. BLAIR. Yes, sir.

Mr. EDMUNDS. Now, Mr. President, how are we to find it? Has not my friend, in a speech that has occupied more than one day in delivery, endeavored to show that one of the great causes of the present disorders in the southern States was this very negro equality: the power of the negroes to put themselves into office; the power of the negroes to tax the community to support education and justice; the power of the negroes, as he expresses it, to have a corrupt Legislature—a power which does not belong to the negro or the Republican, I admit. It only belongs to the white men and

Democrats in the State of New York, where my friend's party is pretty strong at this present time. Boss Tweed and Peter B. Sweeney, with their allies, are the only class of people in a great State, and with white men, who are entitled to have corrupt Legislatures without changing the ballot; but if it happens that in some southern State the colored man, if it be him, has imitated the vices of some of his northern brothers in the Legislature, then it is time to break down negro suffrage. That is the position of the Senator and his party, and they are welcome to it, even from their own point of view.

But who is it my friend intends to decide whether this experiment is a failure or not? The very men who have complained from first to last that it was an outrage upon them that it was resorted to; that it must be a failure; that it ought to be reversed; who appealed to my honorable friend and his party in the last presidential campaign to take measures to reverse it; and a party that intended—I will not say by arms—but a party that intended by some means—and when that party wants to do anything it generally finds the constitutional means somewhere—by all constitutional means to reverse what the Republican party had done, as one of the fruits of the war; to reverse all reconstruction, and to remit the southern people, as my friend calls them, to wit, the southern rebels, because the great mass of white society were rebels in one way or another, to their rights, and those rights, as they call them, were rights that recognized no equality in the negro, either in a civil or a political sense.

That is the position; and the trouble is—my friend says that is the cause of these Ku Klux—that the people who compose the ruling classes in the South, the white men, the great body of intelligence among the white men in the South, are determined to resist this great change in the form of the government and in their social condition. They therefore sympathize, as Senators on this floor do, not with the methods of these orders and organizations, but with the grievance which they pretend they have, to wit, negro suffrage and northern immigration and freedom of opinion, and with the design which is to drive it out and expel it.

The disorders in the South are not like the disorders in many other States, where there always are disorders, the results of private malice. The slaying of men there, as a rule, is not because the murderer and the assassin have any hostility or quarrel with the person who is the victim; but it is one step in the progress of a systematic plan and an ulterior purpose, and that is not to leave in any of those States a brave white man who dares to be a Republican or a colored man who dares to be a voter. The one is to be expelled or slain and the other is to be reduced to what they consider to be his normal condition. And while it is possible that there are many people in those States, as I have no doubt there are, who are pained at the severity and cruelty of these political methods, they, notwithstanding, do encourage and tacitly consent to them by their inaction. The white people of the South (and my friend says they are all members of the Democratic party, and in a large degree they are) could have peace, order, quiet, liberty, protection of life and property in every one of those States in two weeks if they only would. They and their northern allies are accessory to these enormous crimes which disgrace them and the nation by the very fact that they suffer them to go on without taking any noble steps to end them.

The great party at the North that sympathizes with this party at the South is accessory also. It has it in its power by uniting with us in legislation, it has it in its power without legislation, by taking the bold and open ground that this war is a finality and that the constitutional results of it are to be accepted in good faith and that the rights of citizens are to be protected in every State, to give life to those whose life is threatened, to give the peaceable possession of property to those who are despoiled, to revive industry, to increase education, to promote happiness. But, sir, the fear is that if they come over to our principles of preserving the rights of all, traitors, rebels, murderers, assassins, whoever they may be, as well as of the old friends of our flag, black and white, by the impartial execution of law, of the protection of private property, of freedom of opinion, of the expression of that freedom, of the free exercise of the ballot, it will be found that our party is right and their party is wrong. There is the trouble, sir; and therefore it is that every measure which we propose in order to uphold that which the people and the States have guarantied by the Constitution is assailed by all that ingenuity and contrivance can resort to to put it in an unfair and improper attitude before the people; not by honorable Senators, of course, with any such purpose; but they look at it with perverted eyes. They think that a provision to punish crime is an attack upon liberty. They think that a provision to put down insurrection is an enforcement of martial law against the liberties of the people.

Mr. President, I have the impression that no man who has read and observed the history of the last twenty years need be afraid with this book, the Constitution of his country, in his hand, to go forward either as a party man or as a statesman—and in a large sense they are the same thing—to go forward in the discharge of all the constitutional duties which this Constitution imposes upon him lest the people will not support him. Why, sir, it has been said that the Republican party—and I only speak of it now in the sense that I spoke of it a moment before as the party of the country—is to be endangered in the minds of the intelligent citizens of this country because it uses, to borrow the expression of one of the oppo-

nents of this bill, the last measures of the Constitution to preserve life, liberty, and property. It does not use the last measures of the Constitution. I wish it did; but I hope this will be adequate. The party need not be afraid or ashamed, publicly and boldly, everywhere, in every hamlet of the land, to stand upon this law if it be enacted, and to defend it, and to challenge any man who denies our right and our duty to pass laws of this character and for the purposes for which we pass them, to meet him. No, sir, the result upon a question like this of an appeal to the people whose memories are longer than two years or ten years will be, in my opinion, a supreme triumph to the party that bravely does its duty because it is duty.

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